

**International Union of Operating Engineers, Local 925, AFL-CIO (Sims Crane and Equipment Company) and Ray O. Worley. Case 12-CB-3787**

February 24, 1995

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND COHEN

On August 5, 1994, Administrative Law Judge William N. Cates issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, International Union of Operating Engineers, Local 925, AFL-CIO, Tampa, Florida, its officers, agents, and representatives, shall take the action set forth in the Order.

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

*Peter J. Salm, Esq.*, for the General Counsel.  
*Richard P. Siwica, Esq. (Egan, Lev, & Siwica)*, of Orlando, Florida, for the Union.

**DECISION**

**STATEMENT OF THE CASE**

WILLIAM N. CATES, Administrative Law Judge. This is an unfair labor practice prosecution brought by the National Labor Relations Board's (the Board) General Counsel, acting through the Acting Regional Director for Region 12, in the form of a complaint and notice of hearing (complaint) issued on February 25, 1994, against the International Union of Operating Engineers, Local 925, AFL-CIO (the Union) based upon an unfair labor practice charge filed by Ray O. Worley, an individual (Worley) on December 15, 1993. I heard the case in trial in Tampa, Florida, on May 9 and 10, 1994.

Specifically, the complaint alleges that on or about August 4, 1993, the Union, through its Business Manager Ronald Horne (Business Manager Horne), refused to provide its local bylaws revision committee with office assistance and meeting times and threatened the committee's chairman (Worley)

with unspecified reprisals. It is also alleged that on or about August 27, the Union, through its President William Piper (President Piper), threatened to, and did, call police to remove and thereafter excluded Worley from a meeting of the executive board of the Local Union and that President Piper removed Worley from his elected position as an auditor for the Local Union. It is further alleged that the Union on or about September 1993 by its president, Piper, removed Worley from the Union's bylaws revision committee. It is alleged the Union took the action it did because Worley previously filed an unfair labor practice charge against the Union with the Board. The above is alleged to violate Section 8(b)(1)(A) of the National Labor Relations Act (the Act).

The Union stipulated at trial that the Board's jurisdiction is properly invoked.<sup>1</sup> It is undisputed the Union is a labor organization within the meaning of the Act.<sup>2</sup>

The Union admits that Business Manager Horne and President Piper are its agents within the meaning of Section 2(13) of the Act; however, the Union denies having violated the Act in any manner alleged in the complaint. All parties were afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs.

On the entire record, and my observation of the demeanor of the witnesses, I will, as hereinafter more fully explained, conclude the Union violated the Act substantially as alleged in the complaint.

**FINDINGS OF FACT**

**I. THE FACTS**

*A. Worley's Account of Events*

In attempting to establish or defend against the allegations set forth in the complaint, the parties called four witnesses and presented various documents.

Worley has been a member of the Union since 1969 and for a number of years worked in the trade as a crane operator. Worley suffered an on-the-job injury in 1982 and remained on workmen's compensation until 1988 when he reached a settlement of his claim by payment of 10 years of wage losses. Worley successfully filed a disability claim with the Social Security Administration approximately 2 months before he settled the above-referenced workmen's compensation claim and was awarded 100 percent disability. Worley did not seek work in the trade other than as a nonworking foreman and/or elected union official until 1991 when the Social Security Administration established a "trial work pe-

<sup>1</sup> Jurisdiction is based on commerce data related to Sims Crane and Equipment Co. (Sims) a corporation with an office and place of business located in Tampa, Florida, where it is engaged in the business of renting cranes and other construction equipment to various construction firms. During the year preceding issuance of the complaint herein, a representative period, Sims purchased and received goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Florida. I find Sims is engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. At times material herein, the Union and Sims were parties to a collective-bargaining agreement.

<sup>2</sup> I specifically find the Union is a labor organization within the meaning of Sec. 2(5) of the Act.

riod''<sup>3</sup> program. Worley thereafter sought employment through the Union's hiring hall and was referred in December 1991 to work for Pomco and Associates, Inc. (Pomco)<sup>4</sup> at the Coolant Tower Project in Crystal River, Florida, where, with the assistance of an oiler, he operated a manitowoc crane setting precast concrete. Worley worked the Pomco job for 7 months until he was fired.

Worley testified he spoke with Business Manager Horne about his discharge<sup>5</sup> and asked Horne to file a grievance<sup>6</sup> on his behalf relating to his discharge. According to Worley, Business Manager Horne never filed a grievance on his behalf. On September 4, 1992, Worley filed an unfair labor practice charge with the Board in Case 12-CB-3628 which formed the basis for the Board's October 20, 1992 complaint against the Union in which it was alleged the Union had, since on or about July 1, 1992, failed to process a grievance related to Worley's discharge from Pomco. On or about December 22, 1992, the Union settled Case 12-CB-3628 by a payment of \$2000 to Worley.

Worley testified he met with President Piper on July 28, 1993, because he needed to make a decision whether to continue paying union dues and seeking work or to retire from the trade and take disability retirement. After some discussion with Piper about the potential for upcoming work, Worley decided to continue seeking employment in the trade. Worley told President Piper his limitations required him to seek employment only as a nonworking foreman or operating a large crane with assistance from "an oiler" who could "operate the crane [for him] for a while and do any climbing or anything like that." Worley testified he brought his union dues current on that same occasion and checked to insure his name was still on the out-of-work list.<sup>7</sup>

Worley attended the Union's regular general membership monthly meeting on July 30, 1993.

Worley testified that among other business conducted at the meeting, two local auditor positions were filled by a vote of the general membership. Worley said he asked President Piper at the meeting what the qualifications for seeking an auditor's position were and added "I was told that all you had to do was have your dues current and have your name on the out-of-work list." It is undisputed Worley was elected to one of the two local auditor positions filled that evening.

According to Worley, the membership decided at the July 30, 1993 meeting to establish a bylaws revision committee inasmuch as the Local's bylaws had not been updated since 1960. It is undisputed Worley was one of five members elected by the membership to serve on that committee. Immediately following the general membership meeting the bylaws revision committee met and elected Worley chairman. Business Manager Horne, who also met with the committee,

offered full support to the committee including space at the union hall for the committee to meet 1 hour prior to the monthly general membership meetings.

Worley testified that on July 31, August 1 and 2, 1993, he began to formulate a plan of action for the bylaws revision committee. During this same time, Worley spoke via telephone with President Piper about the Committee's work in progress and attempted to fax the committee's plan of action to the union hall on August 3, 1993. Worley stated the fax equipment was not functioning so he took the committee's plan of action to the union hall on August 4, 1993.

Worley testified President Piper, Business Manager Horne, and secretary/bookkeeper, Delores Frost were present at the union hall on August 4. Worley showed Business Manager Horne the committee's plan of action and wanted the Union to mail copies of the plan to all members of the committee.<sup>8</sup> Worley said Business Manager Horne was "a little bit upset" and:

He told me that he had changed his mind about the By-Laws Revision committee. That as far as he was concerned, he was not going to help us, the secretary was not going to help us, and Bill Piper was not going to help us. He was not going to open up the office any more. He was not mailing out anything for us. And that I had always been a little bit squirrely, as of ten years in the past, and as far as he was concerned I would always be a little bit squirrely. We ended up arguing about it, and me trying to point out to him that he was the Business Manager and that he had an obligation to do what the membership had asked him to do in the prior meeting.

According to Worley, Horne:

informed me that he was upset because of that two thousand dollars<sup>9</sup> that I had gotten from them in the past and that it was going to come back to haunt me, and that he was going to get it back one way or the other.

Worley said he again told Business Manager Horne that was not right, that it was his (Horne's) job to do what the membership wanted. According to Worley, Horne left the union hall and he did likewise but they met again in the parking lot. Worley said Business Manager Horne again told him he was "going to get that \$2,000 back one way or the other." Worley asked if he was threatening him and Business Manager Horne replied he could take it anyway he wanted to. Worley said they then got in each other's face and Worley asked if Horne was going to sue him, take him to court, or shoot him. According to Worley, Horne wanted Worley to hit him first so he could sue him and get the \$2000 back that way. Worley told Horne: "You've got the same option. You hit me first. If you hit me, I will stomp a mudhole in your you know what." Worley said they were speaking loudly as they left the parking lot.

<sup>3</sup> The "trial work period" of the Social Security Administration is fully explained in the record. In its simplest form, an individual on Social Security disability may return to work on a trial basis for a fixed time without a loss of benefits.

<sup>4</sup> Pomco and the Union were parties to a collective-bargaining agreement applicable at all times material herein.

<sup>5</sup> Worley testified Business Manager Horne told him he had a good case.

<sup>6</sup> The Pomco/Union collective-bargaining agreement contained a grievance and arbitration procedure.

<sup>7</sup> Worley testified his name was properly listed on the union maintained out-of-work list.

<sup>8</sup> Worley said the committee had discussed with Business Manager Horne about contacting other unions in the region to obtain copies of their bylaws to see if anything useful could be adopted by the committee in its revision work.

<sup>9</sup> As noted elsewhere, the Union settled a prior unfair labor practice charge filed by Worley by a \$2000 payment to Worley.

The members of the bylaws revision committee met immediately before the general membership meeting on August 27, 1993.<sup>10</sup> On that same date, Worley attempted to attend the executive board meeting in his capacity as one of the duly elected local auditors. All executive board members were present including President Piper and Business Manager Horne. Worley testified:

Before the meeting was convened, [President Piper] informed me that he didn't think I should be in the meeting and that I should get out. That he had decided according to a provision in the constitution, that I had not actively been seeking work at the trade and, therefore, I was ineligible to hold office on the Executive Board, or run for an election for office on the Executive Board.

Worley told President Piper he was wrong, that he had asked about the qualifications for office before the election. Worley insisted he met all qualifications for office namely that he had actively been seeking work in the trade as reflected on the out-of-work list and he was a member in good standing of the Union in that his union dues were paid. According to Worley, President Piper said he didn't care that he (Piper) had made the decision and that if Worley didn't get out of the meeting, he would have the guard remove him. Worley told President Piper he would just have to have the guard remove him. The guard asked Worley to leave but Worley refused saying it should be left to the Executive Board whether he stayed or left. Worley testified President Piper said it was his decision alone to remove him from the Executive Board, that he was the one "making the call on it." and if Worley did not leave he would call the sheriff's department. Worley told President Piper to go ahead and call the sheriff's department—which Piper did. Worley walked out of the executive board meeting room prior to the sheriff's representative arriving on the scene. Worley testified President Piper told the sheriff's department representative that the person involved in the conflict had gone and the sheriff's department was no longer needed. Worley testified he did not attend the Executive Board meeting held that evening.<sup>11</sup>

According to Worley, the bylaws revision committee met 1 hour before the regularly scheduled monthly union general membership meeting on September 24, 1993. Worley also attended the regular membership meeting that evening. According to Worley, the general membership wanted to know what was going on with the bylaws revision committee. Worley testified President Piper announced "that not only was I off the Executive Board, but I could not serve on the By-Laws Committee as well, it being a membership-elected committee." Worley testified "I was questioning everything. How come I couldn't even appeal to the Executive Board about my being removed."

<sup>10</sup> Worley said he told the other committee members what had transpired at the union hall on August 4, 1993.

<sup>11</sup> The executive board did not conduct any official business while Worley was present.

#### *B. President Piper's and Business Manager Horne's Accounts of Events*

President Piper testified Worley came to the union hall on July 28, 1993, and the two of them discussed the availability of work in the trade in the Union's jurisdiction. Piper said Worley was exploring the possibility of taking his union pension<sup>12</sup> but was concerned there might be extended work in the trade upcoming in the area.

President Piper attended the general membership's regular monthly meeting on July 30, 1993. He said he and Worley did not discuss eligibility requirements for seeking union office either before or at that meeting.

As noted elsewhere, it is undisputed that Worley was elected as an auditor for the Local Union and to serve on the Union's bylaws revision committee at the July 30, 1993 meeting. It is likewise undisputed that Worley was elected by the bylaws revision committee to serve as its chairman.

According to President Piper, a former member (Robert Vick) who had been on disability of some sort was seeking at the July 30 meeting to be reinstated as a member of the Union with the understanding he couldn't, for health reasons, work in the trade but just liked being a member of the Union. Piper testified Worley explained at the meeting how Vick could work "through the system" on "Social Security disability." Piper said that after Worley spoke about Social Security disability, he began to think maybe Worley was on Social Security disability and as such was not actively seeking work in the trade.<sup>13</sup> President Piper said he decided to look into Worley's status.

President Piper testified Worley came to the union hall on August 5, 1993. Piper said he, secretary Frost, and Business Manager Horne were all present at the time. Piper said Worley was talking about a mail out<sup>14</sup> but he paid little attention to him. Piper said there was a heated exchange between Worley and Business Manager Horne about when the committee could meet. According to President Piper, Worley pointed his finger in Horne's face and with a raised voice and in an upset manner told Horne "Well, you have no choice but to do as—I say." Business Manager Horne responded that Worley had just said the magic words that he (Worley) could take all his paperwork with him and do it himself because neither he nor President Piper or secretary Frost was going to do his work for him. President Piper said Business Manager Horne walked out at that time.<sup>15</sup>

President Piper testified Worley and Horne continued their exchange in the parking lot where the two were "nose-to-nose." Piper even thought the two were going to engage in fisticuffs. Piper testified that although he is hard of hearing, he heard Worley tell Business Manager Horne "I'm going

<sup>12</sup> President Piper explained the Union has two types of pensions, the first being a disability pension and the other being regular retirement from the trade.

<sup>13</sup> President Piper said it was illegal under the Union's constitution for Worley or anyone else to hold union office while drawing a pension.

<sup>14</sup> Piper stated that Worley, as chairman of the bylaws revision committee, wanted to do some research and have a mail out.

<sup>15</sup> Union Secretary Frost and Business Manager Horne corroborated President Piper's testimony essentially as outlined above.

to stomp a mudhole in your back.”<sup>16</sup> Business Manager Horne testified he pointed his finger at Worley and told him “and another thing, the little \$2000 deal isn’t over with yet.” Horne explained he was referring to the settlement of the earlier unfair labor practice case of Worley and he added he mentioned it because “he just wanted to aggravate the hell out of [Worley].”

President Piper testified that sometime after August 5 but before August 27, 1993, he telephoned the Social Security Administration and after providing that agency with Worley’s social security number, was told Worley was on social security disability and had been for 2 years. President Piper testified that based on that information he decided Worley was not eligible to run for and/or hold office in the Union.

President Piper testified that just before the executive board went into session on August 27, 1993, he removed Worley from membership on the Board.<sup>17</sup> Piper explained to Worley that according to the Union’s constitution it was illegal for him (Worley) to hold office in the Union because he was on Social Security disability. Piper testified Worley did not want to leave the executive board meeting and suggested if he wanted him removed to call the law which Piper said he did. Piper stated Worley thereafter left the executive board meeting and filed an appeal with the Local regarding his removal from office. President Piper testified Worley did not show up for his appeal at the September executive board meeting.<sup>18</sup> Piper thereafter advised Worley to take his appeal to the International Union.<sup>19</sup>

Article XXIV of the constitution reads in pertinent part as follows:

The terms of all Local union officers shall be three years, except that when and if permitted by applicable law, the terms of Local Union office may be four (4) years. No member shall be eligible for election, be elected, nor hold office unless he shall have been a member continuously in good standing in the Local Union electing him for one (1) year preceding the month of nominations; and provided that no member shall be eligible for election, be elected, nor hold office unless he shall also have been a member of the organization for two years immediately prior to election.

No member shall be eligible for election, be elected nor hold office who has not during the year, and in the case of one seeking the office of Business Manager two years, immediately prior to the month of nominations, been continuously employed at the trade, or who has not actively sought continuous employment at the trade.

<sup>16</sup> Business Manager Horne testified Worley “screamed” at him from across the parking lot and told him he would beat him to death and “stomp a mudhole in [his] ass.”

<sup>17</sup> President Piper told Worley he was removing him pursuant to article XXIV of the Union’s constitution.

<sup>18</sup> Worley testified President Piper told him at the September meeting that he could not attend the executive board meeting and his appeal would not be heard. Worley testified on rebuttal that he waited outside the door at the September 1993 executive board meeting to present his appeal but was never allowed to do so.

<sup>19</sup> Worley’s appeal was denied at the International level as being untimely.

. . . .

If no member fulfills the foregoing conditions of eligibility for a particular office, any member currently in good standing in the Local Union, and otherwise eligible, shall, upon being nominated, be eligible to be elected to, and to hold, that office.

Notwithstanding any other provision of this Constitution, no member retired from work at the trade shall be eligible for election, be elected nor hold office in any Local Union.

President Piper testified he not only reviewed the Union’s constitution before removing Worley but also reviewed numerous decisions and opinions of the Union’s general president.<sup>20</sup>

President Piper testified that in September 1993, he removed Worley from his elected position on the bylaws revision committee. Piper said he did so because

A member retired should not be setting policy for the people that are working. He was not a member seeking continuous work at the trade. He should not sit on the committee making policy for the people that are working . . . at the trade.”

Piper said he removed Worley from both his elected positions for the exact same reason, namely he “wasn’t actively seeking work in the trade.

## 2. Analysis and conclusions

The central question simply stated is, did the Union remove Worley from his elected positions of auditor and membership on the bylaws revision committee because he previously filed and settled an unfair labor practice charge against the Union. I am persuaded the answer is yes. First, Worley filed a prior unfair labor practice charge that resulted in a Board complaint against the Union. That complaint was settled by the Union paying Worley \$2000. The check was signed both by President Piper and Business Manager Horne and noted it was a “nuisance value settlement.” Second, on July 28, Worley asked President Piper about work in the trade and reminded Piper of his limitations. Worley asked Piper to inform him of any jobs similar to the one the Union had referred him to at the Pomco jobsite where he operated a heavy duty crane.<sup>21</sup> Worley also brought his union dues current at that time. Third, on July 30, 1993, Worley asked President Piper what the eligibility requirements for holding office were. President Piper told Worley “all [he] had to do was have [his] dues current and have [his] name on the out-of-work list.”<sup>22</sup> It is undisputed Worley’s name was on the

<sup>20</sup> President Piper acknowledged on cross-examination the Union’s constitution does not address Social Security disability.

<sup>21</sup> Piper acknowledges the meeting took place and that Worley spoke of retirement but then decided that there was going to be some work in the area in the trade for the next 20 years.

<sup>22</sup> President Piper does not believe he had any one-on-one discussions with Worley at the July 30 meeting and Piper specifically denies having any eligibility for office discussions with Worley either before or at the July 30 meeting. I credit Worley’s testimony that he discussed eligibility for office requirements with President Piper at the July 30, 1993 meeting. Worley impressed me as an individual who checked every angle on any matter that might impact on anything which could inure to his advantage such as retirement possi-

out-of-work list and his dues were current. Worley was elected to two union positions at the July 30, 1993, meeting. Fourth, it is clear Business Manager Horne told Worley on August 4, both inside and outside the union hall, that he was upset about the \$2000 Worley had received from the Union and such would haunt him (Horne) and he was going to get it back one way or the other.<sup>23</sup> Fifth, Worley was removed from his elected position as auditor on July 27, 1993,<sup>24</sup> and his membership on the bylaws revision committee in September assertedly because he was not eligible to hold office. I note Worley's removal came approximately a month after President Piper told Worley what the qualifications for office were, which qualifications Worley met and to which President Piper raised no immediate objections, but only a few days after Business Manager Horne in President Piper's and secretary Frost's presence told Worley the Union was still "upset"<sup>25</sup> with him and was going to settle things out with him one way or the other. In light of all the above, it is clear the Government established a strong prima facie showing that Worley's filing the prior unfair labor practice charge and thereafter obtaining a settlement of that charge was "a motivating factor" in the Union's decision to remove him from his elected positions.

Having concluded the Government established a prima facie showing that Worley's prior unfair labor practice charge and subsequent settlement was a motivating factor in the Union's decision to remove him from his elected positions, the burden shifts to the Union to establish it would have removed him had he never filed and settled the prior unfair labor practice charge. I am persuaded the Union failed to meet its burden. First, President Piper, who asserts he alone made the decision to remove Worley, had difficulty

bilities, social security disability requirements, workmen's compensation benefits or settlements, and the like. Worley seemed to take pride in his ability to utilize "the system" to his advantage. It is against this backdrop that I am persuaded he checked with Piper about eligibility requirements for office in the union.

<sup>23</sup> I credit Worley's testimony that Horne twice mentioned the \$2000 on August 4, once in the union hall where President Piper and secretary Frost were and once outside where just Worley and Horne were. Horne only denies mentioning the \$2000 payment inside the union hall. I find, as alleged in the complaint, that Horne's latter comments as outlined above constitute a threat of unspecified reprisals against Worley in violation of Sec. 8(b)(1)(A) of the Act.

<sup>24</sup> The credited testimony establishes President Piper told Worley if he did not leave the Executive Board meeting on that date, that he would call the local sheriff's department and have him removed. Inasmuch as I conclude President Piper removed Worley from his elected auditor's position because he filed unfair labor practice charges against the Union, I also conclude he unlawfully threatened Worley with physical removal in violation of Sec. 8(b)(1)(A) of the Act.

<sup>25</sup> The Union contends Business Manager Horne did not make the decision to remove Worley that President Piper alone made that call. Even if President Piper made the decision without consulting Business Manager Horne, which I consider unlikely, Piper had signed the check settling Worley's prior unfair labor practice charge and he was present at the union hall when Horne announced the Union was still upset with Worley over the prior unfair labor practice charge and settlement payment and the Union was going to settle the matter to its satisfaction one way or the other. There is no showing President Piper tried, or wanted, to distance himself from Business Manager Horne's stated views toward Worley's prior unfair labor practice charge and settlement.

stating exactly why he removed him. When called as an adverse witness by the Government, Piper stated he removed Worley because he was not continuously seeking active work at the trade. At yet another point he stated it was because Worley was not seeking continuous work at the trade. In the Union's case-in-chief, President Piper testified he removed Worley because he checked on Worley's status and found he was on Social Security disability and removed him because it was illegal to hold office and draw a pension at the same time. Piper said the latter fact alone was "enough" to decide Worley was ineligible to run for or hold office in the Union. President Piper testified he told Worley on (August 27) he was removing him from the executive board because he was on Social Security disability, and that according to the Union's constitution, it was illegal for him to hold office. I am persuaded, in agreement with the Government, that Piper's ambiguous and somewhat contradictory testimony as to the reason or reasons for Worley's removal from his duly elected positions suggests pretext on the part of the Union and indicates the real reason was something else which I am persuaded was the fact Worley filed and settled a prior unfair labor practice charge against the Union.

President Piper's testimony he relied on the Union's constitution in removing Worley from his elected positions does not withstand close scrutiny. First, the Union's constitution states that no member shall be eligible to seek or hold office who (1) has not during the year—immediately prior to the month of nomination—actively sought continuous employment at the trade—or (2) has retired from work at the trade. Even if President Piper's testimony is interpreted that he relied on either or both of the above constitutional provisions, the evidence tends to establish neither applied to Worley and that the Union, President Piper in particular, knew so on August 27, and in September when Piper took action against Worley. In that regard, President Piper knew as of July 28, that Worley was seeking employment in the trade because they discussed such on that date. President Piper knew Worley was on the out-of-work list inasmuch as the Union maintains the list. President Piper knew Worley worked 7 months starting in 1991 at the Pomco jobsite.<sup>26</sup> The Union referred Worley to the Pomco job. President Piper acknowledged Worley had been drawing Social Security Disability since 1988. Piper acknowledges Worley asked him on July 28, about further work comparable to what he had performed at the Pomco site. Thus on and after July 28 (including July 30, August 27, and September) President Piper knew Worley was seeking continuous employment at the trade. President Piper also knew on and after July 28, that Worley was not retired from the trade because Worley was still actively seeking employment on that date and the Union's records do not reflect Worley had ever taken retirement (disability or regular) from the Union's pension funds. Furthermore, President Piper's testimony that he relied upon decisions and opinions of the Union's general president in removing Worley does not withstand examination. The general president's decisions and opinions exclusively address questions arising where members have retired from work at the trade or have taken a union (disability or regular) retirement. In fact, one decision and opinion of General President Frank Hanley dated

<sup>26</sup> It was Worley's being fired from that job that led to his filing the prior unfair labor practice charge against the Union.

July 21, 1992, (U. Exh. 9, pp. 15–16) pertains to the eligibility of two members to hold office while receiving pension benefits from former employers. General President Hanley ruled the two were eligible to hold office notwithstanding the fact they were drawing pensions from their previous employers. Thus, in the case sub judice, Worley was drawing Social Security disability from the Government and was not, nor ever had been, drawing a pension payable from the *Union's* pension funds. Thus, it is clear President Piper could not have relied on the Union's constitution to justify removing Worley from his elected positions because Worley met the constitutional requirements to seek and hold office.

In light of all the above, I am persuaded Worley met the qualifications to seek and hold union office and the Union knew so on and after July 28, 1993. Thus, I conclude and find the Union failed to demonstrate it would have removed Worley from his elected union positions even if he had not filed his prior unfair labor practice charge against the Union.

The Board has consistently held that a union's restriction of members' access to the Board is unlawful coercion that violates Section 8(b)(1)(A) of the Act. The Union's actions removing Worley from his elected positions in retaliation for his having filed and settled his prior unfair labor practice charge against the Union clearly constitutes such unlawful coercion, and I so find.

I shall now examine the remaining issue, namely, did the Union on or about August 4, 1993, acting through Business Manager Horne, unlawfully refuse to provide its Local's bylaws revision committee with office assistance and meeting times. I conclude it did. The credited testimony establishes that when Worley (who was chairman of the committee) met with Business Manager Horne at the union hall on August 4, 1993, Horne told Worley that neither he nor other union staff members were going to help or assist the committee any further with its project. Horne told Worley he had for the past 10 years been, "a little bit squirrely" and in an "upset" manner told Worley that the payment of \$2000 to him would come back to haunt him. It is reasonable to conclude, as I do, that Horne's displeasure with Worley over his prior unfair labor practice charge caused Horne to withdraw assistance to the committee in retaliation against Worley as the committee chairman. Horne's action violates Section 8(b)(1)(A) of the Act, and I so find.

#### CONCLUSIONS OF LAW

1. Sims Crane and Equipment Co. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Sims Crane and Equipment Co. and the Union have at all times material herein been parties to a collective-bargaining agreement.

3. International Union of Operating Engineers, Local 925, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

4. By engaging in the following conduct, the Union violated Section 8(b)(1)(A) of the Act:

(a) Refusing to provide the Local bylaws revision committee with office assistance and meeting times.

(b) Threatening members with unspecified reprisals.

(c) Threatening, removing, and excluding Ray O. Worley from the executive board meeting on August 27, 1993.

(d) Removing Ray O. Worley from his elected positions as auditor and from membership on the bylaws revision committee.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found the Union has engaged in violations of Section 8(b)(1)(A) of the Act, I shall recommend it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Union discriminatorily removed Ray O. Worley from his elected positions of auditor and membership on the bylaws revisions committee, I shall recommend he be reinstated to those positions. It is recommended his reinstatement to the auditor position be for the term he was elected to serve. It is recommended he be reinstated to membership on the bylaws revision committee until that committee has concluded its assigned tasks and has been disbanded by a vote of the union membership. I also recommend the Union be ordered to post an appropriate notice to members, copies of which are attached as appendix for 60 days in order that members may be apprised of their rights under the Act and the Union's obligation to remedy its unfair labor practices.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended<sup>27</sup>

#### ORDER

The Union, International Union of Operating Engineers, Local 925, AFL–CIO, Tampa, Florida, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to provide the bylaws revision committee with office assistance and meeting times.

(b) Threatening members with unspecified reprisals.

(c) Threatening, removing, and excluding Ray O. Worley from Local executive board meetings during his elected term as auditor.

(d) Removing Ray O. Worley from his elected positions as auditor and membership on the bylaws revision committee.

(e) In any like or related manner interfering with, restraining, or coercing members in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reinstatement Ray O. Worley to his elected position as local auditor for the remainder of the term for which he was elected, and reinstate Ray O. Worley to membership on the bylaws revision committee until such time as that committee has completed its assigned tasks and has been disbanded by a vote of the local membership.

<sup>27</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Post at its offices copies of the attached notice marked "Appendix."<sup>28</sup> Copies of the notice on forms provided by the Regional Director for Region 12, after being signed by the Union's authorized representative shall be posted by the Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Union to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Forward to the Regional Director for Region 12 signed copies of the notice sufficient in number for Sims Crane and Equipment Co, if willing, to post at its Tampa, Florida facility.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Union has taken to comply.

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<sup>28</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

NOTICE TO MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for mutual aid and protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to provide the bylaws revision committee with office assistance and meeting times.

WE WILL NOT threaten our members with unspecified reprisals.

WE WILL NOT threaten to remove or exclude Ray O. Worley from executive board meetings during his elected term as auditor.

WE WILL NOT remove Worley from his position as a member on the bylaws revision committee.

WE WILL reinstate Ray O. Worley to his elected position of auditor for the remainder of the term for which he was elected and WE WILL reinstate Ray O. Worley to membership on the bylaws revision committee until that committee has finished its tasks and has been disbanded by a vote of the membership.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 925, AFL-CIO